

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CHARLES E TREMAIN  
2242 – 233<sup>RD</sup> ST  
MARSHALLTOWN IA 50158

LOWE'S HOME CENTERS INC  
C/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-00830-DWT  
OC 12/14/03 R 02  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Lowe's Home Centers, Inc. (employer) appealed a representative's January 15, 2004 decision (reference 01) that concluded Charles E. Tremain (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 12, 2004. The claimant participated in the hearing. Marcella Burkheimer, R.J. Vidimos and Kelly Rich, the delivery manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

#### ISSUES:

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

#### FINDINGS OF FACT:

The claimant started working for the employer on March 31, 1999. He worked as a full-time sales manager. The claimant understood the employer did not want employees to verbally abuse co-workers. In May 2001, the employer gave the claimant a written warning for using profanity at work when he talked on the phone.

At various times during his employment, the claimant became upset with co-workers and with Rich. On December 15, 2003, Rich noticed the claimant did not charge a customer a pallet charge and asked the claimant about this. The claimant was frustrated and took Rich's remark as somewhat sarcastic and smart. The claimant did not believe it had been necessary for Rich to make any remark because he knew what had to be done. The claimant became upset at Rich's remark. He went and threw a pallet on the floor and then loaded the necessary bags of cement onto the pallet. About 20 minutes later, the claimant called Rich's phone and told him, "You're a worthless piece of shit."

The claimant's remarks bothered Rich to the extent he reported the claimant's comments to the employer. Rich did not appreciate the claimant's unsolicited phone call or his comments.

The employer discharged the claimant on December 16, 2003, for violating the employer's policy for verbally abusing Rich on December 15.

The claimant established a claim for unemployment insurance benefits during the week of December 14, 2003. He filed claims for the weeks ending December 20, 2003 through January 3, 2004. He received a total of \$744.00 in benefits for these weeks.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known his December 15 remarks to Rich were offensive. The claimant made the decision to call Rich's phone 20 minutes after Rich initially asked about the pallet charge. The claimant intentionally and substantially violated the standard of behavior the employer has a right to expect from an employee when he called Rich after he loaded a pallet with cement bags. The claimant committed work-connected misconduct on

December 15, 2003. As of December 14, 2003 the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not qualified to receive unemployment insurance benefits during the weeks ending December 20, 2003 through January 3, 2004. He has been overpaid \$744.00 in benefits.

DECISION:

The representative's January 15, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 14, 2003. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits during the weeks ending December 20, 2003 through January 3, 2004. He has been overpaid a total of \$744.00 in benefits.

dlw/kjf